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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,291	08/08/2005	Karen Ann McCue	102792-414)11088P3)	7805
27389	7590	11/16/2006	EXAMINER	
NORRIS, MCLAUGHLIN & MARCUS			PETRUNCIO, JOHN M	
875 THIRD AVE			ART UNIT	
18TH FLOOR			PAPER NUMBER	
NEW YORK, NY 10022			1751	

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/525,291

Applicant(s)

MCCUE ET AL.

Examiner

John M. Petruncio

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

The objection to the specification is withdrawn in view of the response directed thereto.

The outstanding rejection under 35 USC 103(a) according to the previous Office Action is maintained in its entirety.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 6,221,823. to Crisanti et al. inherently as evidenced by US Pat. 3,833,731 to Grier et al and/or US Pat. 4,104,374 to Reuther et al.

The Crisanti et al '823 reference discloses a germicidal acidic hard surface cleaning composition which can comprise acids (col.3, line 5 et seq) including citric, sorbic, acetic, boric, formic, maleic, adipic, lactic and glycolic used singly or in conjunction with one another (col. 3, lines 25-27) such as citric and lactic (see Table I, Exs 5-7 and 17-18) in combination with a solvent including dipropylene glycol n-propyl ether, construed as a "water miscible glycol ether" (col. 4, line 24) or ethanol (col. 4, line 49) in a mixture (col. 3, line 66). This reference further discloses inclusion in the acidic composition, having a preferred pH of 3 (col. 9, line 25), of an anionic surfactant including a sulfonate (col. 5, line 35 et seq) and a nonionic surfactant (col. 6, line 53 et seq)..

The amendment to the claims directed to specifying that the composition exhibits fungistatic efficacy to *Aspergillus niger* is construed as an intended use or alternatively, if entitled to patentable weight, inherently disclosed by the primary reference as evidenced by prior art use of sorbic acid (see Grier et al '731 at col. 3, line 12; col. 4, line 70) or boric acid (see Reuther et al '374 at col. 7, lines 10 and 16) as fungicides re *Aspergillus niger*.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37.CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Crisanti et al '823 reference for the reasons above and that which follows.

This reference does not appear to state the exclusion of specific compounds such as certain quats as called for by claim 16. However the Crisanti et al '823 reference does teach that while preservatives may be added in minor amounts, these preservatives do not include a disinfectant component (col. 8, line 45 et seq).

Accordingly. At the time of the invention, one skilled in the art having the benefit of the Crisanti et al '823 references teaching would have been motivated to exclude antimicrobials as called for by claim 16 as the Crisanti et al '823 formulations per se had antimicrobial efficacy as they were found effective against gram positive *Staphylococcus aureus* and gram negative *Pseudomonas aeruginosa* (col. 18, line 45 et seq) and Crisanti et al specifically taught the exclusion of known disinfectants.

The Crisanti et al '823 reference also does not appear to define the claimed composition in terms of a log reduction protocol against one or more of *Staphylococcus aureus* and *Pseudomonas aeruginosa* inter alia as called for by claim 20. However, at the time of the invention, one skilled in the art having the benefit of Crisanti et al's teaching of the antimicrobial efficacy of the same or similar formulations as to these same organisms as taught by this reference would recognize that the composition as defined by claim 20 is the same or similar as taught by the Crisanti et al '823 reference

notwithstanding the alternative description of antimicrobial efficacy as to the identical bacteria.

No claim stands allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. Petruncio whose telephone number is 571-272-1323. The examiner can normally be reached on 10:30Am-7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John M. Petruncio
November 9, 2006


DOUGLAS MCGINTY
SUPERVISORY PATENT EXAMINER

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